

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ERIC DRAKE

vs.

FEDEX GROUND PACKAGE SYSTEM,
INC.

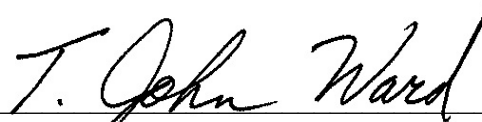
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CASE NO. 2:08-CV-397-TJW-CE

ORDER

The above-titled and numbered civil action was referred to United States Magistrate Judge Chad Everingham pursuant to 28 U.S.C. § 636. The report of the Magistrate Judge (Dkt. No. 60), which contains his recommendation that the court deny the plaintiff Eric Drake's motion for summary judgment (Dkt. No. 39) and grant in part and deny in part the defendant FedEx Ground Package System, Inc.'s ("FedEx") cross-motion for summary judgment (Dkt. No. 42), has been presented for consideration. No objections were filed to the report and recommendation. The court is of the opinion that the conclusions of the Magistrate Judge are correct. Therefore, the court adopts the United States Magistrate Judge's report, in its entirety, as the conclusions of this court. Accordingly, the plaintiff's motion for summary judgment (Dkt. No. 39) is DENIED, and the defendant's motion for summary judgment (Dkt. No. 42) is GRANTED in part and DENIED in part. The plaintiff's state law claims are preempted by federal law. Genuine issues of material fact remain as to Mr. Drake's declaration of value and FedEx's limitation of liability, however.

SIGNED this 6th day of May, 2010.

A handwritten signature in black ink, reading "T. John Ward". The signature is written in a cursive style with a large, stylized "T" and "W".

T. JOHN WARD
UNITED STATES DISTRICT JUDGE